

## **RATING (VALUATION) ACT 1999**

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### **EXPLANATORY NOTES**

#### **THE ACT**

16. The Act secures that the assumptions on which the 1990 and 1995 rating lists were compiled will continue to apply; and provides for subsequent rating lists to be compiled on the same basis.

#### ***Assumptions as to the hypothetical tenancy***

17. The legislation amended is in paragraph 2 of Schedule 6 to the Local Government Finance Act 1988 ('the 1988 Act'). As amended by [section 1\(2\)](#), sub-paragraph (1) of paragraph 2 of Schedule 6 reads -

“The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions -

- (a) **the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;**
  - (b) **the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;**
  - (c) **the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.**
18. The following concepts used in the provision are defined elsewhere:
- *A hereditament* is defined by section 64(1) of the Local Government Finance Act 1988 by reference to the definition which applied for the purposes of rating under the General Rate Act 1967. Section 115(1) of that Act defined 'hereditament' as 'property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in a valuation list'.
  - The *day by reference to which the determination is to be made* is in effect a day specified by the Secretary of State by order under paragraph 2(3)(b) of Schedule 6 to the 1988 Act. In each case the Secretary of State has specified a day two years before the day on which a list comes into force. This enables the substantial work involved in preparing new rating lists to be undertaken on the basis of known, rather than anticipated, market values. (For example, in relation to the list which is to come into force on 1st April 2000, rateable values will be determined by reference to market rents at 1st April 1998.)
19. The significant change made to the provision is the introduction of the assumptions (a) and (b).

*These notes refer to the Rating (Valuation) Act 1999  
(c.6) which received Royal Assent on 26 May 1999*

20. The first assumption, as to the day on which the hypothetical tenancy begins, makes explicit the present practice, which is to treat it as beginning on the day by reference to which the valuation is to be made. This follows from the notion of the hypothetical tenancy itself, and the assumption that the property is to be valued as if vacant and to let.
21. The first assumption paves the way for the second assumption, that immediately before the tenancy begins (subject to one exception) the hereditament is assumed to be in a state of reasonable repair. This assumption will in practice be applied in the particular context of the property being valued. What is reasonable repair may vary according to the age and type of the property, the locality in which it is situated, and all the surrounding circumstances.
22. This provision as to the assumed state of reasonable repair makes an exception in a case where a reasonable landlord would consider repair to be uneconomic. This gives statutory expression to the existing case law. In the case of *Saunders v. Maltby (VO)* [1976] R.A. 109 it was established by the Court of Appeal that whether or not the state of disrepair of premises was to be taken into account in estimating rateable value depended on whether on economic grounds a reasonable landlord under the hypothetical tenancy could be expected to remedy any existing disrepair. If the expenditure required to remedy disrepair was so great that it did not make economic sense to do so, the rateable value would be estimated on the basis that the landlord would instead accept a lower rent for the premises.
23. The third assumption, as to the tenant being responsible for repairs, and the costs and expenses of maintenance, reproduces with necessary re-wording the existing provision of the 1988 Act as to the assumption that the tenant under the hypothetical tenancy is responsible, during the currency of the tenancy, for any rates and taxes applicable to a tenant, for repairs and insurance, and for any other expenses necessary to maintain the hereditament in a state to command the estimated rent.
24. [Section 1\(3\)](#) ensures that the assumption as to repair at the outset of the hypothetical tenancy applies throughout the life of the list. Although market rentals for the purpose of estimating rateable value are taken as at the antecedent valuation date, two years before the date at which the list comes into force, and remain applicable as at that date if the list is subsequently altered, certain other matters are taken as at other times. Matters affecting the physical state of the property or its locality, for example, are taken (under paragraph 2(7) of Schedule 6 to the 1988 Act) as they are assumed to be at the date on which the list comes into force, where the value is being determined in compiling a new list. Where the value is being determined in order to alter a list because circumstances have changed (for example, because the property has been extended, or sub-divided) the physical characteristics of the property and its surroundings are taken as they are assumed to be at an appropriate date, ascertained by reference to the circumstances in question, according to rules set out in regulations made by the Secretary of State. (The currently applicable regulations are the [Non-Domestic Rating \(Material Day for List Alterations\) Regulations 1992 \(S.I. 1992/556\)](#).)
25. The state of repair of property being a matter relating to its physical condition, the amendment in section 1(3) ensures that notwithstanding the reference to a later date in relation to other physical circumstances, the assumption in section 1(2)(b) will apply when the property is valued for the list as it comes into force and also whenever it is re-valued for the purpose of altering the list at a later date.

***Prospective and retrospective effect***

26. [Section 2\(1\)](#) secures the application of the assumptions contained in section 1(2) in relation to the rating lists which will come into force on 1st April 2000, and subsequent lists.
27. [Section 2\(2\)](#) applies the amended provision retrospectively in relation to the rating lists which came into force on 1st April 1990 and 1st April 1995. Therefore alteration of

those lists will be made in the light of the amendments effected by section 1(2). Both lists were compiled on the basis that the assumption that premises were in reasonable repair was the applicable law, subject to the exception for uneconomic repairs.

***Savings from retrospective effect***

28. [Section 2\(3\)](#) creates an exception to the retrospective effect of section 2(2) in respect of cases where proposals by ratepayers and others to alter existing rating lists were made to the valuation officer before 12th March 1998, the day after that on which the Lands Tribunal decision in *Benjamin (VO) v. Anston Properties Ltd.* was published. The ratepayers protected by this saving include the ratepayer in that case.
29. In such a case, unless the proposal had been withdrawn or finally disposed of (whether by alteration of the list, or decision on appeal) before 11th March 1998, the proposal is to be dealt with on the basis that the rateable value of the hereditament in question may be estimated on the basis of the actual state of repair of the hereditament. Proposals made on or after 12th March are (unless they relate to a hereditament which is the subject of an earlier proposal which is still unsettled at that date) to be dealt with according to the assumption that the hereditament is in a state of reasonable repair. The current rules about the circumstances in which proposals for alterations may be made are contained in the [Non-Domestic Rating \(Alteration of Lists and Appeals\) Regulations 1993, S.I. 1993/291](#), as amended. The 1993 Regulations came into force on 1st April 1993, and superseded, with savings, the [Non-Domestic Rating \(Alteration of Lists and Appeals\) Regulations 1990, S.I. 1990/582](#), as amended.